

REPRESENTATIVE FOR PETITIONER: David Nixon, President
Nixon Tool Co., Inc.

REPRESENTATIVES FOR RESPONDENT: None

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

NIXON TOOL CO., INC.)	
)	
Petitioner)	Review of the Claim for Enterprise
)	Zone Personal Property Tax Credit
)	
v.)	Petition No. 89-000-01-4-0-10000
)	
)	County: Wayne
WAYNE COUNTY AUDITOR)	Township: Wayne
)	
Respondent)	Assessment Year: 2001
)	

On Appeal from the Wayne County Auditor

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Findings of Fact and Other Matters of Record

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
2. Pursuant to Ind. Code § 6-1.1-20.8-3(b), Mr. David Nixon, President of Nixon Tool Co., Inc. (Nixon), on behalf of Nixon, filed a written request for review of the Claim for Enterprise Zone Business Personal Property Tax Credit (Form EZ-1) by the Board. The request was filed April 23, 2002.
3. The request for review is labeled Board Exhibit A.
4. In accordance with the Tax Court decision *Graybar Electric Co. v. State Board of Tax Commissioners*, 723 N.E. 2d 491 (Ind. Tax 2000), the Board by letter dated May 1, 2002 requested the Petitioner address the seven (7) factors outlined in 50 IAC 10-4-2. The Board established May 31, 2002 as the deadline for Nixon to address the seven (7) factors. The Board's letter is labeled Board Exhibit B.
5. By letter dated May 29, 2002, Mr. Nixon requested additional time to address the seven (7) factors outlined in 50 IAC 10-4-2. Mr. Nixon's letter is labeled Board Exhibit C.
6. By letter dated May 30, 2002, the Board granted Nixon an extension up to and including July 1, 2002 to address the seven (7) factors. The Board's letter is labeled Board Exhibit D.
7. By letter dated June 26, 2002, Mr. Nixon made a second request for additional time to address the seven (7) factors outlined in 50 IAC 10-4-2. Mr. Nixon's second request letter is labeled Board Exhibit E.

8. By letter dated June 28, 2002, the Board granted Nixon's second request for an extension up to and including July 31, 2002 to address the seven (7) factors. The Board's letter is labeled Board Exhibit F.
9. The Petitioner failed to contact the Board prior to the July 31, 2002 deadline outlined by the Board's June 28, 2002 letter.
10. The Board verified its letter was mailed, with proof of mailing, and also verified that the letter was not returned to the Board as not deliverable.
11. The subject property is located at 301 North Third Street, Richmond, Indiana 47375, Wayne Township, Wayne County.

Conclusions of Law

1. Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the filing of a Form EZ-1, the levels of review are clearly outlined by statute. First, the form EZ-1 is filed with the County and acted upon by the County Auditor. Ind. Code § 6-1.1-20.8. If the taxpayer disagrees with the County Auditor's action on the Form EZ-1, then a written request for review may be filed with the Board. Ind. Code § 6-1.1-20.8-3 (b).
2. The Board is the proper body to hear an appeal of the action of the County Auditor pursuant to Ind. Code § 6-1.1-20.8-3 (c).
3. In reviewing the actions of the County Auditor, the Board is entitled to presume that its actions are correct. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance

with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome the presumption of correctness to prevail in the appeal.

4. It is fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. *See also* Ind. Code § 4-21,5-2-4 (a)(10) (Though the Board is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
5. The Board has the legal authority to consider a late-filed application for the Enterprise Zone Business Personal Property Tax Credit. *Graybar Electric Co. v. State Board of Tax Commissioners*, 723 N.E. 2d 491 (Ind. Tax 2000). In *Graybar*, the Tax Court references *State Board of Tax Commissioners of Indiana v. New Energy Company of Indiana* (Ind. App. 1992), 585 N.E. 2d 38.
6. In considering a late-filed application, the Board shall consider all of the relevant facts and circumstances, and determine if it is more equitable to grant or to deny the EZ credit application.
7. The Board has adopted seven (7) factors to guide the exercise of its discretion in determining whether to grant late-filed applications. 50 IAC 10-4-2 (b). The Petitioner was informed of the seven (7) factors and had the opportunity to present evidence on these factors.
8. The request for review of the EZ credit application is denied for failure of the Petitioner to respond and address the seven (7) factors outlined in 50 IAC 10-4-2.

The above stated findings of fact and conclusions of law are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this _____ day of _____, 2002.

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS-

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.